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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DARRYL WILLIAM QUINN, Defendant and Appellant.	G040809 (Super. Ct. No. 07NF0811) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William Lee Evans, Judge. Affirmed.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Introduction

A jury found defendant Darryl William Quinn guilty of possession of controlled substance paraphernalia. We appointed counsel to represent defendant on appeal. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), setting forth the facts of the case and requesting that we review the entire record. Pursuant to *Anders v. California* (1967) 386 U.S. 738, appointed counsel suggested we consider possible issues pertaining to whether the trial court erred by (1) questioning the defense expert witness regarding his opinion on usable amounts of narcotics and immediately instructing the jury on the law relating to usable amounts, and (2) admitting evidence of defendant's statements to the police officers before he was advised of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

On December 16, 2008, this court provided defendant 30 days to file written argument on his own behalf. That period of time has passed, and we have received no communication from him.

We have examined the entire record and counsel's *Wende* brief, and find no arguable issue. (*Wende, supra,* 25 Cal.3d 436.) We therefore affirm.

Facts and Proceedings in the Trial Court

Defendant was charged in an information with felony possession of methamphetamine in violation of Health and Safety Code section 11377, subdivision (a) and misdemeanor possession of controlled substance paraphernalia in violation of section 11364.

At trial, evidence showed that, on March 4, 2007, two police officers were patrolling the alley "of" an apartment complex when they were contacted by a woman who told them narcotics were being sold in two garages at a nearby apartment complex. The officers walked to the complex and noticed a set of keys dangling from the outside doorknob of one of the upstairs apartments. Defendant came out of that apartment, made

eye contact with the officers, and, after appearing startled, quickly went back into the apartment and shut the door. Two minutes later, defendant emerged from the apartment and "started talking loudly at [the officers]." He told them his neighbor had been "calling the police on him and he was tired of it" and he believed his neighbor had drilled holes in his wall and was secretly setting up video and audio equipment inside defendant's apartment.

One of the officers asked defendant if he wanted to show them the cameras inside his apartment and defendant "got kind of excited and he said, 'yeah, yeah, I will show you.'" Defendant escorted the officers into the apartment. Defendant told the officers he had been living alone in the apartment for about a year. One of the officers asked defendant if there were any narcotics or weapons in the apartment, and defendant said there were not. The officer asked defendant if he could search his apartment while the other officer looked at the hidden cameras. Defendant gave the officer permission to search the apartment.

The officer found a locked drawer in a bedroom and asked defendant if he had the key to the lock. Defendant handed the officer the key and gave him permission to unlock the drawer. Inside the drawer, the officer found several pieces of a crystalline substance and a Ziploc baggie containing a powdery residue. The officer also found a glass pipe of the type used to smoke methamphetamine on top of a bedroom closet shelf and a second pipe on a hallway closet shelf.

After collecting those items, the officer rejoined defendant and the other officer in the living room, and "just kind of engaged [defendant] in conversation about the video and audio equipment that he was describing." The officer told defendant what he had found and asked whether the items belonged to defendant. Defendant said the items were his and that, although he had been a heavy methamphetamine user for "a lot of years," he had not used for over a month. Defendant was placed under arrest. Testing of the substances found in defendant's apartment showed the presence of .017 grams of

methamphetamine—a quantity defendant's expert witness testified did not constitute a "usable" amount.

The jury found defendant not guilty of felony possession of methamphetamine, but guilty of misdemeanor possession of controlled substance paraphernalia. The court suspended the imposition of sentence, placed defendant on three years' informal probation, and ordered him to participate in a drug treatment program under Penal Code section 1210. Defendant appealed.

Analysis of Potential Issues

Appointed counsel suggested we consider the following possible issues: (1) "Did the trial court abdicate neutrality in its questioning of the defense expert regarding his opinion on what constituted a 'usable' amount of narcotics and immediately *sua sponte* instructing the jury on the law relating to a usable amount of narcotics; and if so, were these errors harmless beyond a reasonable doubt?" and (2) "Were [defendant]'s Fifth and Sixth Amendment rights violated by the admission at trial of the statements [defendant] made to the police officers before [defendant] was given his *Miranda* warnings; and if so, was this error harmless beyond a reasonable doubt?" (Fn. omitted.)

As to the first issue, even if the trial court had erred in its questioning of the defense expert on usable quantities of narcotics or by immediately instructing the jury on that issue, any such error was harmless because the jury found defendant not guilty of the possession of methamphetamine offense.

As to the second issue, the record shows defendant's constitutional rights were not violated by the admission of his pre-*Miranda* statements to the police because he was not in custody at the time he made those statements. (*Oregon v. Mathiason* (1977) 429 U.S. 492, 495 ["*Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody'"], italics added; *People v. Ochoa* (1998) 19 Cal.4th 353, 401 [whether a person is in custody is an

objective test; the pertinent inquiry is whether there was a "'"'*formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest*"'"], italics added.) The record shows that at the time defendant made the statements to the police, which were admitted at trial, he had neither been arrested nor been subjected to any restriction of his freedom of movement.

Our review of the record pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra,* 386 U.S. 738, including the possible issues referred to by appointed counsel, has disclosed no reasonably arguable appellate issue. Competent counsel has represented defendant in this appeal.

Disposition

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

O'LEARY, ACTING P. J.

MOORE, J.